

Firm I.D. 13681

1920-665

KM/eg

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOLLY SPETHMANN,

Plaintiffs

v.

**WILLIAM GIBSON and
TIMOTHY J. KENNEDY, INC.,**

Defendants.

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Court No.: 08-CV-2996

ASSIGNED JUDGE: Coar

MAGISTRATE JUDGE: Mason

**DEFENDANT, TIMOTHY J. KENNEDY, INC.'S
ANSWER AND AFFIRMATIVE DEFENSE
TO PLAINTIFF'S COMPLAINT AT LAW**

Defendant, TIMOTHY J. KENNEDY, INC., by its attorneys, SEGAL McCAMBRIDGE
SINGER & MAHONEY, LTD., answers Plaintiff's Complaint at Law as follows:

1. Plaintiff is an individual resident of Wisconsin. The Defendants are individual
and corporate residents of and do business in the State of Illinois. All parties are diverse.

ANSWER: This Defendant has insufficient knowledge as to the residence of Plaintiff.
This Defendant admits TIMOTHY J. KENNEDY, INC. is an Illinois
corporation doing business in Illinois, and denies it is an individual. This
Defendant has insufficient knowledge to the remaining allegations of
Paragraph 1, and therefore neither admits nor denies same but demands
strict proof thereof.

2. On or about May 30, 2006, in the County of Will at 1961 Naperville-Plainfield
Road, the Plaintiff was driving her car in a northbound direction on Naperville-Plainfield Road.
The Defendant, WILLIAM GIBSON, crashed his truck into the back of Plaintiff's car.

ANSWER: This Defendant admits that on May 30, 2006, at the location alleged, the
vehicle driven by WILLIAM GIBSON came into contact with a vehicle
driven by Plaintiff at the alleged location, but has insufficient knowledge
to admit or deny the remaining allegations of Paragraph 2.

3. As a direct and proximate result, the Plaintiff was seriously injured and suffered body damage.

ANSWER: This Defendant has insufficient knowledge to form a belief as to the truth or falsity of the allegations of Paragraph 3, and therefore neither admits nor denies same but demands strict proof thereof.

4. At all times relevant to this complaint, the Defendant, WILLIAM GIBSON, was driving a vehicle owned by TIMOTHY J. KENNEDY, INC., in the course and scope of his employment with TIMOTHY J. KENNEDY, INC. At all times relevant to this complaint, WILLIAM GIBSON was an agent and/or employee of TIMOTHY J. KENNEDY, INC., a trucking company.

ANSWER: This Defendant admits the allegations of Paragraph 4.

5. At all times relevant to this complaint, Defendant, WILLIAM GIBSON, had a duty to keep a proper lookout, follow at an assured clear distance, to reduce speed when conditions warranted, and not to collide with the rear of Plaintiff's car. Defendant, WILLIAM GIBSON, breached one or more of the foregoing duties and, as a direct and proximate result, the Plaintiff was injured.

ANSWER: This Defendant admits only to those duties imposed by law and otherwise denies the allegations of Paragraph 5.

6. TIMOTHY J. KENNEDY, INC. is respondeat superior liable for the negligent acts of its agent and/or employee WILLIAM GIBSON.

ANSWER: This Defendant admits the allegations of Paragraph 6.

WHEREFORE, Defendant, TIMOTHY J. KENNEDY, INC., denies the Plaintiff is entitled to judgment in any sum whatsoever and demands judgment in its favor.

DEFENDANT'S AFFIRMATIVE DEFENSE
Plaintiff's Contributory Negligence

Defendant, TIMOTHY J. KENNEDY, INC., pursuant to Fed. R. Civ. Proc. 8(c), by and through its attorneys, SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD., and for its first affirmative defense states as follows:

1. That the present action arises from injuries allegedly sustained by Plaintiff, MOLLY SPETHMANN, as a result of an occurrence on May 30, 2006.
2. Plaintiff's Complaint purports to set forth a cause of action in negligence against Defendants WILLIAM GIBSON and TIMOTHY J. KENNEDY, INC.
3. This Defendant has denied the allegations set forth in Plaintiff's Complaint and denies that is legally liable to Plaintiff, MOLLY SPETHMANN, for those allegations set forth in the Plaintiff's Complaint.
4. At the time and place complained of in Plaintiff's Complaint, Plaintiff, MOLLY SPETHMANN, owed a general duty to look out for her own safety and otherwise act in a reasonably safe manner.
5. Plaintiff failed to exercise due care for her safety and was then and there guilty of one or more of the following acts or omissions:
 - (a) Carelessly and negligently failed to keep a proper lookout for other vehicles lawfully upon the roadway;
 - (b) Carelessly and negligently failed to yield to other vehicles lawfully upon the roadway;

- (c) Carelessly and negligently was inattentive while driving;
- (d) Carelessly and negligently failed to avoid an accident when she had the last clear chance to do so;
- (e) Carelessly and negligently made a sudden stop in the roadway without giving notice to others in the roadway; and
- (f) Was otherwise careless and negligent.

6. That one or more of the foregoing negligent acts and/or omissions proximately caused or contributed to the alleged damages claimed by Plaintiff, MOLLY SPETHMANN, in her Complaint.

7. That to the extent that Plaintiff's fault is found to be greater than fifty-percent (50%) of the proximate cause of the injuries and damages alleged, Plaintiff, MOLLY SPETHMANN, is barred from recovering any damages from Defendant, TIMOTHY J. KENNEDY, INC.

8. That in the alternative, if it is determined that Plaintiff, MOLLY SPETHMANN'S, own negligence or fault was less than 51% of the occurrence, Defendant, TIMOTHY J. KENNEDY, INC., is entitled to a reduction in any award granted in proportion to the percentage of fault attributed to Plaintiff, MOLLY SPETHMANN.

WHEREFORE, Defendant, TIMOTHY J. KENNEDY, INC., denies the Plaintiff is entitled to judgment in any sum whatsoever and demands judgment in its favor.

Respectfully submitted,

SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD.

By: s / Kathleen McDonough
Attorneys for Defendant,
TIMOTHY J. KENNEDY, INC.

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